

Honorable Richard Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et al.,

Defendants.

NO. 2:16-CV-01655-RAJ-JPD

CITY DEFENDANTS' RESPONSE TO
PLAINTIFF'S PROPOSED MOTION
PURSUANT TO 42 C.F.R. 2.23
VIOLATIONS

NOTED ON MOTION CALENDAR:
OCTOBER 6, 2017

I. RELIEF REQUESTED

Defendants City of Seattle, Officer Marshall Coolidge, Sean Culbertson, Timothy Renihan and Officer Hancock (City of Seattle Defendants) request the Court deny Plaintiff's motion entitled, "Plaintiff's Proposed Motion Pursuant to 42 C.F.R. 2.23 Violations." Dkt. 119. Plaintiff alleges that the Defendants wrongfully obtained his health care records without his consent in violation of 42 C.F.R. § 2.23, and seeks various forms of relief. The protected health information at issue is mental health information, not substance abuse treatment information, and is not being used in a criminal prosecution and therefore is not covered by 42 C.F.R. § 2.23. As a result, Plaintiff's motion fails and must be denied. The City Defendants also join in the response to this motion filed by the King County Defendants. *See* Dkt. 126.

II. FACTS RELEVANT TO MOTION

Plaintiff has filed this § 1983 action against the City of Seattle, several of its police officers, King County, and two of its mental health professionals related to his involuntary detention and commitment for mental health treatment. The King County Defendants filed Plaintiff's mental health records in their possession under seal in response to Plaintiff's motion challenging the Defendants' assertion of qualified immunity. *See* Dkt. 89, 89-1, 90, 92, 94. The records filed by King County are the only medical records the City Defendants have for Plaintiff, as Plaintiff has refused to provide his medical records, either by producing them in discovery or by signing authorizations to obtain such records. *See* Dkt. 122 (Declaration of Gregory E. Jackson), ¶ 3. Plaintiff did not respond to King County's request for a conference or to its motion to seal his mental health records. Instead, Plaintiff filed this motion weeks later to allege violations of Codes of Federal Regulations.

III. ARGUMENT

42 C.F.R. § 2.23 Is Inapplicable To Plaintiff's Mental Health Records

Plaintiff claims the Defendants' access to his protected health information violates 42 C.F.R. § 2.23. Plaintiff's reliance on 42 C.F.R. § 2.23 is misplaced. This federal regulation permits providers to give patients access to their own substance abuse treatment records, and restricts the use of such information in initiating or substantiating criminal prosecutions. 42 C.F.R. § 2.12, 2.23. The records at issue here are not substance abuse treatment records but mental health records not covered by the regulation Plaintiff cites. The records also are not being used in a criminal prosecution, which the regulation restricts. Even if this federal regulation applied to the records at issue here, it would not preclude the disclosure of Plaintiff's health records in this personal injury action. *See Mitchell v. Mt. Hood Meadows Oreg.*, 195 Or. App. 431, 439, 99 P.3d 748 (2004) (federal regulations dictating confidentiality of drug treatment records did not apply to plaintiff's subpoenaed medical records). Plaintiff's

1 claim that the Defendants have violated 42 C.F.R. § 2.23 is unsupported by fact and law and
2 his motion should be denied.

3
4 **IV. CONCLUSION**

5 For all the foregoing reasons, Plaintiff's motion alleging violations of 42 C.F.R. 2.23
6 should be denied.

7 DATED this 2nd day of October, 2017.

8
9 s/ Amee J. Tilger

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17 Attorneys for Defendants City of Seattle,

18 Officer Marshall Coolidge, Sean Culbertson,

19 Timothy Renihan and Officer Hancock

CERTIFICATE OF SERVICE

I certify that on the 2nd day of October, 2017, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Kyle Lydell Canty, Inmate No. 401358 WA State Department of Corrections P.O. Box 900 Shelton, WA 98584 DOCWCCInmateFederal@DOC1.WA.GOV Pro Se Plaintiff	(X) Electronic Service
Samantha D. Kanner, WSBA #36943 Deputy Prosecuting Attorney King County Prosecuting Attorney's Office 500 Fourth Avenue, 9 th Floor Seattle, WA 98104 (206) 296-8820 SamanthaKanner@kingcounty.gov Attorney for King County	(X) Electronic Service

DATED this 2nd day of October, 2017, in Seattle, Washington.

s/ Courtney Grubb
 COURTNEY GRUBB Legal Assistant